



*State of New Jersey*  
DEPARTMENT OF THE PUBLIC ADVOCATE  
240 WEST STATE STREET  
P.O. Box 851  
TRENTON, NJ 08625-0851  
PHONE: (609) 826-5040 FAX: (609) 984-4757

JON S. CORZINE  
*Governor*

RONALD K. CHEN  
*Public Advocate*

January 2, 2008

VIA HAND DELIVERY

John Chacko, Clerk  
Superior Court of New Jersey  
Appellate Division  
Hughes Justice Complex  
25 Market Street  
P.O. Box 006  
Trenton, NJ 08625-0006

**Re: In re Attorney General's Directive on Exit Polling**  
**Docket No. A-543-07T1**

Dear Mr. Chacko:

On behalf of the Department of the Public Advocate, we enclose for filing a Notice of Motion To Appear as *Amicus Curiae* and To Present Oral Argument; the Certification of Ronald K. Chen in support of this motion; and a Certificate of Service, in the above-referenced appeal. Since the Public Advocate is a State agency, fees for this filing are waived pursuant to N.J. Stat. Ann. § 22A:2-22.

I would appreciate receiving a file-stamped copy of the papers in the enclosed envelope.

John Chacko, Clerk  
Page 2

Should you have any questions regarding the above, please do not hesitate to contact me at your earliest convenience. Thank you.

Very truly yours,

RONALD K. CHEN  
PUBLIC ADVOCATE OF NEW JERSEY

By: 

FLAVIO L. KOMUVES  
Deputy Public Advocate

Enclosures

cc: Larry Etzweiler, Esq. (w/encl., via hand delivery)  
Frank Corrado, Esq. (w/encl., via first class mail)  
Edward Barocas, Esq. (w/encl., via first class mail)

RONALD K. CHEN  
PUBLIC ADVOCATE OF NEW JERSEY  
CATHERINE WEISS  
Director, Division of Public Interest Advocacy

By: FLAVIO L. KOMUVES, Deputy Public Advocate  
Department of the Public Advocate  
240 West State Street, 16<sup>th</sup> Floor  
P.O. Box 851  
Trenton, NJ 08625-0851  
(609) 826-5040  
flavio.komuves@advocate.state.nj.us

Attorneys for *Amicus Curiae*,  
Department of the Public Advocate

IN RE ATTORNEY GENERAL'S  
"DIRECTIVE ON EXIT POLLING:  
MEDIA AND NON-PARTISAN PUBLIC  
INTEREST GROUPS" ISSUED JULY 18,  
2007

-----  
American Civil Liberties Union  
of New Jersey, Appellant

Anne Milgram, as Attorney  
General and Chief Elections  
Officer of New Jersey,  
Respondent.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

Docket No. A-543-07T1

Sat below: Anne Milgram, as  
Attorney General and Chief  
Elections Officer of New  
Jersey

**NOTICE OF MOTION TO APPEAR  
AS AMICUS CURIAE AND TO  
PARTICIPATE IN ORAL ARGUMENT**

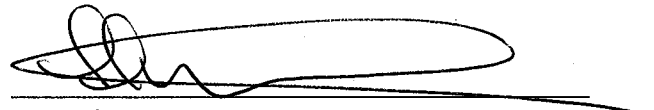
PLEASE TAKE NOTICE that Ronald K. Chen, Public Advocate of New Jersey, hereby moves before the Superior Court of New Jersey, Appellate Division, pursuant to R. 1:13-9, for entry of an Order permitting the Department of the Public Advocate (the "Movant") to participate as *amicus curiae* in this matter, and to present oral argument in support of the Appellant American Civil Liberties Union of New Jersey.

Movant respectfully requests permission to file its *amicus* brief by February 6, 2008, and for the Court to consider its brief along with the briefs of the parties in each of these appeals. In support of this motion, the Department of the Public Advocate relies on the Certification of Ronald K. Chen, filed herewith. Movant respectfully requests that the requirement of a brief in support of this motion, under R. 2:8-1, be dispensed with as unnecessary.

Respectfully submitted,

RONALD K. CHEN  
PUBLIC ADVOCATE OF NEW JERSEY

By:



Flavio L. Komuves  
Deputy Public Advocate  
DEPARTMENT OF THE PUBLIC ADVOCATE  
240 West State Street, 16<sup>th</sup> Floor  
P.O. Box 851  
Trenton, New Jersey 08625-0851  
(609) 826-5040  
flavio.komuves@advocate.state.nj.us

Dated: January 2, 2008

RONALD K. CHEN  
PUBLIC ADVOCATE OF NEW JERSEY  
CATHERINE WEISS  
Director, Division of Public Interest Advocacy

By: FLAVIO L. KOMUVES, Deputy Public Advocate  
Department of the Public Advocate  
240 West State Street, 16<sup>th</sup> Floor  
P.O. Box 851  
Trenton, NJ 08625-0851  
(609) 826-5040  
flavio.komuves@advocate.state.nj.us

Attorneys for *Amicus Curiae*,  
Department of the Public Advocate

IN RE ATTORNEY GENERAL'S  
"DIRECTIVE ON EXIT POLLING:  
MEDIA AND NON-PARTISAN PUBLIC  
INTEREST GROUPS" ISSUED JULY 18,  
2007

-----

American Civil Liberties Union  
of New Jersey, Appellant

Anne Milgram, as Attorney  
General and Chief Elections  
Officer of New Jersey,  
Respondent.  
POLLING

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

Docket No. A-543-07T1

Sat below: Anne Milgram, as  
Attorney General and Chief  
Elections Officer of New  
Jersey

**CERTIFICATION OF RONALD K.  
CHEN IN SUPPORT OF MOTION TO  
APPEAR AS *AMICUS CURIAE* AND  
TO PARTICIPATE IN  
ORAL ARGUMENT**

RONALD K. CHEN, of full age, certifies as follows:

1. I am an attorney admitted to practice in this State,  
and I am the Public Advocate of New Jersey pursuant to P.L.  
2005, c.155, N.J.S.A. 52:27EE-1 et seq. (Public Advocate  
Restoration Act of 2005). I make this certification in support

of the Department of the Public Advocate's application to appear as *amicus curiae* in the matter captioned above.

2. In accordance with the authorizing legislation, the Department of the Public Advocate was reconstituted on January 17, 2006, and I took the oath of office on March 27, 2006.

3. As Public Advocate, I am authorized by statute to intervene in any administrative or court proceedings in order to represent the public interest. N.J.S.A. 52:27EE-57. The public interest is defined as "an interest or right arising from the Constitution, decisions of court, common law or other laws of the United States or of this State inhering in the citizens of this State or in a broad class of such citizens." N.J.S.A. 52:27EE-12.

4. As Public Advocate, I also am charged with representing the interests of those who may be unable to advocate effectively for themselves. N.J.S.A. 52:27EE-2.

5. The issue presented in this appeal is whether the Attorney General may, through an expansive "directive" interpreting the State's anti-electioneering laws, regulate both the media and those who wish to inform voters of their rights and assist them in exercising those rights on Election Day. The directive at issue here, passed without the formalities required by the Administrative Procedures Act, affects, among others:

(a) the right of individual voters to receive assistance in voting;

(b) the rights of nonpartisan and nonprofit organizations to impartially assist voters;

(c) media organizations who report and disseminate information about elections; and

(d) county and local election officials charged with enforcing election laws.

6. This litigation involves pressing issues that affect not only the citizens of New Jersey as a whole, but particularly vulnerable groups who may not have access to effective advocacy on their behalf, including those qualified voters most subject to challenge or to attempts at vote suppression.

7. The Public Advocate's Voting Rights Campaign has been extensively involved in advocating for the rights of eligible voters to register to vote, to cast ballots, and to have their ballots fairly counted. In 2007, these activities have included:

(a) the release of two reports (in April 2007 and September 2007) documenting extensive problems with the accessibility of polling places to voters with disabilities;

(b) the submission of written and oral testimony during four days of hearings before the State Voting

Machine Examination Committee on the need to assure reliability, accuracy, privacy and security in the State's complement of voting machines;

(c) appearance as amicus curiae in Gusciora v. Corzine, No. MER-L-2691-04, also addressing the need for thorough testing and certification before voting machines with paper trails are adopted for use in New Jersey;

(d) the direct and amicus curiae representation of 32 voters denied the right to vote on Election Day, November 6, 2007, before Law Division judges throughout the State, and the representation of two voters in an emergent appeal to the Appellate Division on that same date; and

(e) public education about the recently adopted amendment to the State Constitution that repealed offensive and outdated language about the franchise rights of voters with disabilities.

8. Directly on point to the issue on appeal in this case, the Public Advocate also submitted extensive comments to the Attorney General about the legal rights of exit pollers and election-protection workers to interact with voters near their polling places. The Public Advocate submitted these comments on December 28, 2006. In general, these comments supported the rights of nonpartisan election-protection personnel and the news

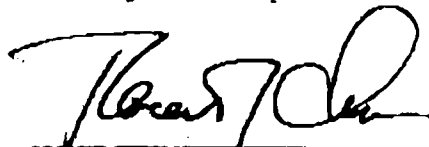


media to interact with and otherwise assist voters outside the polling room where voting occurs.

9. To allow us to respond to the arguments of the appellant and the Attorney General, whose brief this Court has ordered to be filed on January 30, 2008, and to give my staff time to learn the facts and assess the law relevant to this case, I respectfully ask that the brief be due contemporaneously with the appellant's reply brief in this case, which is now due February 6, 2008.

10. I express a belief, based on considered professional judgment, that participation by the Public Advocate as amicus curiae will assist the court in the resolution of issues of public importance presented in these matters, and that no party to the litigation will be unduly prejudiced thereby.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

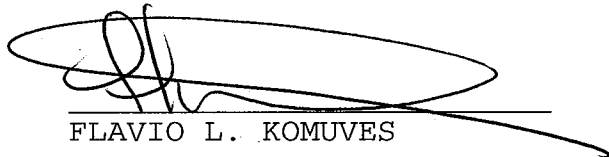


RONALD K. CHEN

Date: January 2, 2008

**CERTIFICATION PURSUANT TO R. 1:4-4(c)**

The undersigned, being attorney for the Department of the Public Advocate in the above-referenced matter, certifies that the affiant has acknowledged the genuineness of the above signature and that this document or a copy with an original signature affixed will be filed if requested by the Court or a party.



FLAVIO L. KOMUVES

Dated: January 2, 2008

RONALD K. CHEN  
PUBLIC ADVOCATE OF NEW JERSEY  
CATHERINE WEISS  
Director, Division of Public Interest Advocacy

By: FLAVIO L. KOMUVES, Deputy Public Advocate  
Department of the Public Advocate  
240 West State Street, 16<sup>th</sup> Floor  
P.O. Box 851  
Trenton, NJ 08625-0851  
(609) 826-5040  
flavio.komuves@advocate.state.nj.us

Attorneys for Amicus Curiae,  
Department of the Public Advocate

IN RE ATTORNEY GENERAL'S  
"DIRECTIVE ON EXIT POLLING:  
MEDIA AND NON-PARTISAN PUBLIC  
INTEREST GROUPS" ISSUED JULY 18,  
2007

-----  
American Civil Liberties Union  
of New Jersey, Appellant

Anne Milgram, as Attorney  
General and Chief Elections  
Officer of New Jersey,  
Respondent.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

Docket No. A-543-07T1

Sat below: Anne Milgram, as  
Attorney General and Chief  
Elections Officer of New  
Jersey

**CERTIFICATE OF SERVICE**

LISA RIDGE, of full age, certifies as follows:

1. I am employed as a secretarial assistant with the  
Department of the Public Advocate.
2. On the date listed below, I hand delivered the  
original and five copies of a Notice of Motion to Appear as  
*Amicus Curiae* and supporting Certification of Ronald K. Chen,  
and this Certificate of Service, for filing to the Clerk,

Superior Court of New Jersey, Appellate Division, Hughes Justice Complex, 25 Market Street, Trenton, New Jersey 08625.

3. On the date listed below, I hand delivered two copies of this Notice of Motion to Appear as *Amicus Curiae*, supporting Certification of Ronald K. Chen, and this Certificate of Service, to:

Larry Etzweiler, Esq.  
Sr. Deputy Attorney General  
P.O. Box 112  
Trenton, New Jersey 08625

4. On the date listed below, I sent two copies of this Notice of Motion to Appear as *Amicus Curiae*, supporting Certification of Ronald K. Chen, and this Certificate of Service, via first-class mail to:

Edward Barocas, Esq..  
American Civil Liberties Union of N.J. Foundation  
P.O. Box 32159  
Newark, New Jersey 07102

and

Frank Corrado, Esq.  
Barry, Corrado, Grassi & Gibson, P.C.  
2700 Pacific Avenue  
Wildwood, New Jersey 08260

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
LISA RIDGE

Date: January 2, 2008